United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

No. 74-1001

Nos. 74-1001, 74-1211

United States Court of Appeals

FOR THE SECOND CIRCUIT

B

P/S

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

and

PENSION FUND OF NEW YORK CITY TRUCKING INDUSTRY LOCAL 807,

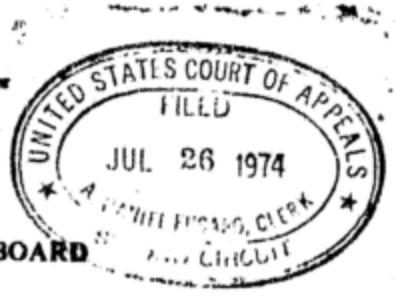
Intervenor,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review and Cross-Application for Enforcement of an Order of The National Labor Relations Board



BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that the Union violated Section 8(b)(1)(A) and (2) of the Act by maintaining a joint employer-union pension fund, the rules of which favored employees who had been union members prior to 1937 over other unit employees who had not been union members prior to 1937.

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "the Union"), pursuant to Section 10(f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) to review and set aside an order of the National Labor Relations Board (Members Jenkins, Kennedy, and Penello) issued against the Union on November 13, 1973, pursuant to Section 10(c) of the Act. In its cross-application, the Board has requested enforcement of its order. Pension Fund of New York City Trucking Industry Local 807 (hereinafter "the Fund") has intervened in these proceedings. The Board's decision and order is reported at 207 NLRB No. 47 (A. 156-190, 198-199).[1] This Court has jurisdiction of the proceedings, the unfair labor practices having occurred in New York State. No jurisdictional issue is presented.

I. THE BOARD'S FINDINGS OF FACT

A. The structure of the Fund

By an Agreement and Declaration of Trust dated December 1, 1950, the Union and various employer associations and individual employers doing business in and around the City of New York established the Pension Fund of New York City Trucking Industry Local 807 for the benefit of employees covered by collective bargaining agreements between those employers and the Union (A. 163; 121-140). The Agreement and Declaration of Trust was amended as of July 25, 1966 (A. 141).[2]

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[1] "A." references are to the printed Appendix filed herein. References preceding a semicolon are to the Board's findings; references following are to the supporting evidence.

[2] The amended Agreement and Declaration of Trust has been inserted in the appendix at A. 141 in the form of a booklet. Accordingly, references to specific items in the amended Agreement will also contain the Article and Section and page within the booklet.

Under the amended Agreement, participating employers make regular payments on behalf of their employees into the Fund in accordance with the terms of their collective bargaining agreements (A. 163; 141, Article II, Section 1, p. 4).

The Fund is administered by a Board of Trustees, consisting of four employer trustees and four union trustees (A. 163; 28). Each group votes as a unit and in the event of a dispute between the two groups, the matter is submitted to an impartial arbitrator for determination (A. 163; 31-32, 141, Article VI, Section 2, pp. 15-16).

B. The Fund amends its rules

On October 1, 1971, the Fund had changed its benefit schedule to permit employees to receive $10.00 per month for each year of pension credit over thirty years in addition to the Thirty Year Pension, which had been the maximum benefit prior to that time (A. 42, 101). Since Social Security records do not exist for employment prior to 1937 and since union contracts did not go back that far, an applicant's employment status prior to 1937 could not be determined through these means for purposes of awarding pension credit (A. 165; 39, 41-42). On February 28, 1973, the Board of Trustees amended Article III, Sections 1 and 2, and the pertinent portions now read (A. 119):

> **Section 1. PENSION CREDITS GENERALLY.** Entitlement to a pension under this plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.
>
> Pension Credits shall be granted only as set forth in this Article.
>
> * * *

SECTION 2. PAST SERVICE

(a) It is recognized that it would be difficult for many, if not most, of the Employees to establish their periods of Covered Employment prior to January 1, 1937. Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. Pension credit shall also be granted for any period of time that an employee can prove that he worked in covered employment through employer records.

* * *

In effect, Article III, Section 2(a) of the Fund's Rules deals with the problem of proving covered employment[3] in the absence of adequate records by permitting the Trustees to grant Pension Credits for the period prior to January 1, 1937, even in the absence of proof of covered employment, to union members on the basis of one year of Pension Credit for each year of union membership prior to 1937. Section 2(a) also provides that, for this purpose, a Pension Quarter shall be credited if the employee was a union member for any part of the quarter. No provision was made for the difficulties non-union employees would encounter in proving covered employment.

---

[3] While covered employment generally consisted of employment in a unit covered by a collective bargaining agreement with the Union, Article III, Section 2(b) of the Fund's amended Rules provided that (A. 120):

* * *

> Periods of employment, even before coverage by a Local 807 contract, by an employer which participated in the Pension Fund on September 1, 1950, shall also be credited provided that it was employment in a category of work (such as driver, helper, etc.) which is covered by Local 807 agreements.

Each applicant for pension benefits was required to fill out a standard pension-application form, which included an authorization to obtain information from Social Security. The application form also solicited the applicant's trucking-industry employment and Union history (A. 170; 146-150). The Fund's administrative staff would obtain post-1937 employment information from Social Security records (A. 171; 38-39, 155). The Fund staff would also write the applicant's current employer and would write the Union seeking the applicant's initiation date, the dates of his membership, and any other comments (A. 37-39, 154-155). With respect to an applicant's pre-1937 employment history, the Fund's staff would write directly to employers listed by the applicant as having employed him prior to 1937 for employment information and would make use of Union records (A. 171; 44-46). It was the Fund's practice not to accept employer records of covered employment unless corroborated (A. 179-180, 50, 59-60).[4] After all the information had been compiled and an analysis prepared, the administrative staff would forward the applicant's file to the Fund's Trustees for final determination (A. 171-173; 45).

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[4] The Fund's Assistant Administrator Jack Zito testified (A. 50):

> Q. Why isn't the employer record enough if it's clear? A. Well, when you are paying out big monies, you can't just base your assumptions and, you know, your application – you are processing this application here.
>
> We just can't take an employer's record for granted, you know, we just can't have it.
>
> So as a check-off, to simplify things, and to actually validate what we are looking for, the union records are very helpful in this instance.
>
> Q. Do the union records show when a man started for a particular corporation or does it in fact just show when he was initiated into the union? A. The union record shows a date of initiation and it shows the employer.
>
> I, also, believe that there are dates in certain instances next to the employer's name.

C. Unfair labor practice charges are filed; a complaint is issued

On October 19, 1972, George Lightfoot, Anthony Palumbo, and Tony Greco, three employees of White Rock Beverages, Inc.,[5] filed unfair labor practice charges against the Union, alleging that the Union and their employer had participated in an employer-financed pension plan which provided for benefits on the basis of length of membership in the Union, that the three employees had been denied pension benefits because they did not have a sufficient period of time as union members, and that by these and other acts the Union had restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act (A. 159; 67-69). After investigation, the Regional Director on December 15, 1972, refused to issue a complaint as to that portion of the charges which alleged that the three employees had been denied pension benefits unlawfully (A. 159-160; 82-84).[6] However, that same day, the Regional Director issued a complaint, alleging that Article III, Section 2(a) of the Pension Fund's amended Rules and Regulations (*supra,* p. 4), granted an unlawful preference to employees who were union members prior to 1937 over other employees who were not union members prior to 1937 in accumulating Pension Credit to qualify for benefits, and that the Union violated Section 8(b)(1)(A) and (2) of the Act by executing and maintaining a collective bargaining agreement with the Company which provided for Company contributions on behalf of

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[5] Since about November 1, 1971, pursuant to a collective bargaining agreement with the Union, White Rock Beverages, Inc., has been one of the employers making contributions to the Pension Fund for its employees (A. 163; 72, 78).

[6] Greco, Palumbo, and Lightfoot appealed this refusal to issue complaint to the General Counsel, who denied the appeals (A. 160; 85-89).

unit employees into the Fund, whose rules granted a discriminatory preference on the basis of past union membership (A. 156, 163-164; 70-75). At the hearing before the Administrative Law Judge, the counsel for the General Counsel contended that the Fund had been administered discriminatorily (A. 169).

II. THE BOARD'S CONCLUSIONS AND ORDER

On these facts, the Board concluded that the Union violated Section 8(b)(1)(A) and (2) of the Act by being party to and maintaining a collective bargaining agreement with the Company and other employers which provided for employer contributions on behalf of unit employees into a jointly administered pension fund, the rules of which favored employees who had been union members prior to 1937 over other unit employees who had not been union members prior to 1937 (A. 185-186, 198-199). The Board also concluded that the evidence failed to establish that the Fund had been administered discriminatorily (A. 183-185, 198-199).

The Board's order requires the Union to cease and desist from in any manner subscribing or being party to, maintaining, supporting, or participating in the Pension Fund insofar and so long as any rules and regulations of the Fund provide or allow service credits for pension purposes based upon or arising out of union membership or provide or allow service credits on any other basis discriminatorily in violation of the Act so as to favor union members over non-union employees employed under the same collective agreement or in the same collective bargaining unit as such union members (A. 199, 187). The order also requires the Union to cease and desist from in any manner causing any employer through participation in the Fund to discriminate against employees so as

to encourage or discourage union membership, or otherwise to violate Section 8(a)(3) of the Act (A. 187-188, 198-199). The order also requires the Union to cease and desist from, in any like or related manner, violating Section 8(b)(1)(A) and (2) of the Act (A. 188, 198-199).

Affirmatively, the order requires the Union to transmit copies of the Board's decision to the Trustees of the Pension Fund, to take the necessary steps to implement the requirements of this order, and to post appropriate notices (A. 188-189, 198-199).

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE UNION VIOLATED SECTION 8(b)(1)(A) AND (2) OF THE ACT BY MAINTAINING A JOINT EMPLOYER-UNION PENSION FUND, THE RULES OF WHICH FAVORED EMPLOYEES WHO HAD BEEN UNION MEMBERS PRIOR TO 1937 OVER OTHER UNIT EMPLOYEES WHO HAD NOT BEEN UNION MEMBERS PRIOR TO 1937.

As shown *supra*, Article III, Section 2(a) of the rules of the jointly administered Pension Fund provides *inter alia*, that "anyone who was a member of Local 807 prior to the period commencing January 1, 1937, may, at the sole discretion of the Trustees be given a year of Pension Credit for each year he was a member of Local 807 during this period." The Board, as we show below, properly concluded that this provision granted a discriminatory preference based on past union membership and that therefore, the Union's participation in this jointly administered pension fund arrangement was in violation of Section 8(b)(1)-(A) and Section 8(b)(2) of the Act.[7]

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[7] Section 8(b)(2) of the Act, in relevant part, declares that it is an unfair labor practice for "a labor organization or its agents . . . to cause or attempt to cause an employer to discriminate against an employee in violation of [Section 8(a)(3) of the (continued)

It has long been recognized that a contractual arrangement which on its face provides for disparate treatment of employees on the basis of union membership is unlawful under the Act. *Local 357, Teamsters v. N.L.R.B.*, 365 U.S. 667, 677-678 (1961) (Harlan, J., concurring) citing *Red Star Express Lines v. N.L.R.B.*, 196 F.2d 78 (C.A. 2, 1952); *N.L.R.B. v. United Brotherhood of Carpenters*, 321 F.2d 126, 129 (C.A. 9, 1963); *N.L.R.B. v. Gottfried Baking Co.*, 210 F.2d 772, 779-780 (C.A. 2, 1954); *Bendix-Westinghouse, etc. v. N.L.R.B.*, 443 F.2d 106, 109-111 (C.A. 6, 1971); *Melville Confections, Inc. v. N.L.R.B.*, 327 F.2d 689, 692 (C.A. 7, 1964), cert. denied, 377 U.S. 933. The underlying rationale is evident, for a fundamental policy of the Act is to insulate employees' job rights from their organizatonal rights. *Radio Officers' v. N.L.R.B.*, 347 U.S. 17, 40 (1954). Thus, an employer or a union by participating in a pension plan or other similar benefit plan supported by employer contributions on behalf of unit employees violates the Act if the plan discriminates on the basis of union membership. *Local 138, International Union of Operating Engineers v. N.L.R.B.*, 321 F.2d 130, 137 (C.A. 2, 1963), enforcing as modified, *J.J. Hagerty, Inc.*, 139 NLRB 633, 637, 651-652 (1963); *N.L.R.B. v. Local 138, International Union of Operating Engineers*, 293 F.2d 187, 198-199 (C.A. 2, 1961); *Local 167, Progressive Mine Workers v. N.L.R.B.*, 422 F.2d 538, 540-542 (C.A. 7, 1970), cert. denied, 399 U.S. 905 (1970); *Melville Confections, Inc. v. N.L.R.B.*, 327 F.2d 689, 690-691 (C.A. 7, 1964), cert. denied, 377 U.S. 933; *Penello v. International Union, United Mine Workers*, 88 F. Supp. 935, 937-939 (D.C.D.C., 1950);

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[7] (continued) Act]. . . ." The latter section, in turn, forbids employer "discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization. . . ." In addition, Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union "to restrain or coerce . . . employees in the exercise of rights guaranteed in Section 7," including "the right to refrain from any or all of such activities."

Carty Heating Corp., 117 NLRB 1417, 1418 (1957); *Local 140, United Furniture Workers*, 109 NLRB 326, 329 (1954).

As long as union and non-union employees are treated alike, past employment may be used in determining qualification for pension benefits. However, a pension plan which purports to grant benefits on the basis of such covered employment may not presume as a matter of course that an employee has the requisite covered employment simply because of his past union membership, since this presumption would give union members a discriminatory advantage in qualifying for benefits. *Nu-Car Carriers, Inc.*, 187 NLRB 850, 851 (1971), petition for review denied, *sub nom., Rosen v. N.L.R.B.*, 455 F.2d 615 (C.A. 3, 1972). In *Nu-Car Carriers*, the rules of a Teamster Pension Fund established in 1952 created a rebuttable presumption that union members had worked under covered employment in each year prior to 1952 that they had been union members. The Board found this presumption discriminatory. It reasoned that "[b]y dispensing with proof of past employment history for members, members receive an advantage: non-members being denied the advantage suffer discrimination." 187 NLRB at 851.

In the instant case, Article III, Section 2(a) of the Fund Rules permits the Trustees to grant pension credits for employment prior to 1937 to employees who were members of the Union prior to 1937 for the time span of their pre-1937 union membership. In contrast, under the Rules, employees who are not union members are required to prove covered employment in order to receive pension credit for the pre-1937 period. Thus, under Section 2(a) union membership is more than just an evidentiary factor supporting a claim of covered employment. Rather, in the Board's view, the vice of Section 2(a) is that it expressly permits

the use of union membership as a substitute for proof of past employment history, while non-members are left with the burden of proving their claims.[8]

Moreover, the non-member's difficulty in proving covered employment before 1937 is magnified by the absence of Social Security records (A. 171; 44-45), and the Fund's unwillingness to accept employer records as proof of covered employment unless they could be corroborated (A. 179-180; 50, 59-60). Given the inherent difficulty in proving covered employment before 1937, the advantage granted under Section 2(a) in permitting pension credits to be awarded to union members without proof of covered employment is significant. Furthermore, since each year of pension credit beyond 30 years is worth $10.00 per month in benefits, the pension credits for the pre-1937 period are extremely valuable. Consequently, here as in *Nu-Car Carriers, supra,* participation in a pension fund arrangement which granted a discriminatory advantage to past union members was properly found unlawful.

Having found a discriminatory arrangement favoring union members the Board properly inferred that union membership would be encouraged. Although intent to encourage or discourage union membership is generally significant in determining if there has been a violation under either Section 8(b)(2) or 8(a)(3) of the Act, "specific evidence of intent to encourage or discourage is not an indispensable element of proof of violation of [§8(b)(2) or] §8(a)(3). . . ." *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 44. As the Supreme Court noted in *Radio Officers', supra,* 347 U.S. at 45, "This recognition that specific proof of intent

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[8] Contrary to the Union's and the Fund's contention (Br. 8-9), the Board's decision and order does not proscribe union membership as a factor in determining covered employment (A. 198 n. 2, 199, 184-185, 187).

is unnecessary where . . . conduct inherently encourages or discourages union membership is but an application of the common-law rule that a man is held to intend the foreseeable consequences of his conduct." See also, *Local 357 Teamsters v. N.L.R.B.*, 365 U.S. 667, 675 (1961); *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 227-228 (1963); *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33-34 (1967). Moreover, one of the clearest examples of discrimination "inherently conducive to increased union membership" so as to obviate the need for any other proof of intent is the granting of more favorable benefits to union members. *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 46, citing with approval this Court's decision in *N.L.R.B. v. Gaynor News,* 197 F.2d 719, 722 (1952). Similarly, with respect to Section 8(b)(1)(A) and 8(a)-(1) of the Act, it is the tendency to coerce and restrain the rights of employees, rather than the underlying motive, which is controlling. *N.L.-R.B. v. Burnup & Sims, Inc.*, 379 U.S. 21, 22-23 (1964); *Welch Scientific Co. v. N.L.R.B.*, 340 F.2d 199, 203 (C.A. 2, 1965) and cases cited therein.

Furthermore, contrary to the contention of the Union and the Fund (Br. 11), the Act does not require that the employees discriminated against be the ones encouraged for purposes of finding a violation. *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 51, affirming, *N.L.R.B. v. Gaynor News Co., supra,* 197 F.2d at 722; *N.L.R.B. v. Philadelphia Iron Works,* 211 F.2d 937, 944 (C.A. 3, 1954). "Encouragement and discouragement are 'subtle things' requiring a 'high degree of introspective perception.' " *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 51. Clearly, it is reasonable to infer that current employees could conclude from the preference accorded pre-1937 union members in obtaining pension benefits *now* that it would be advantageous to become and remain union members in good standing, with the expectation that their membership status may be similarly rewarded in the future. The employees'

"quantum of desire" to join a union need not have immediate manifestations in order to support a finding of unlawful encouragement: the granting of disparate treatment which favors union members provides a sufficient basis to infer that union membership will be encouraged. *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 51.

The Union and the Fund argue (Br. 8) that the Board improperly read into Section 2(a) an unlawful purpose. However, as shown above, the Board did not need to read anything into that section in order to find it unlawful, for the language of Section 2(a) on its face permits preferential treatment on the basis of past union membership. While arrangements which are neutral on their face may require a further showing before a violation can be found (see, *e.g., Local 357, Teamsters v. N.L.R.B., supra,* and *N.L.R.B. v. News Syndicate Co., Inc.,* 365 U.S. 695 (1961)), arrangements which inherently encourage or discourage by according disparate treatment on the basis of union membership or activity have consistently been held to be unlawful. *Radio Officers' Union v. N.L.R.B., supra,* 347 U.S. at 46-47, affirming, *N.L.R.B. v. Gaynor News Co., supra,* 197 F.2d at 722; *N.L.R.B. v. Erie Resistor Corp.,* 373 U.S. 221, 228-229 (1963); *Melville Confections, Inc. v. N.L.R.B., supra,* 327 F.2d at 691-692; *N.L.R.B. v. International Association of Machinists, Aeronautical Industrial District Lodge 727 and Local Lodge 728,* 279 F.2d 761, 766 (C.A. 9, 1960), cert. denied, 364 U.S. 890; *N.L.R.B. v. Local 269, I.B.E.W.,* 357 F.2d 51, 56 (C.A. 3, 1966). Moreover, once a discriminatory arrangement is found to exist, the Board need not wait for a specific instance of discrimination before acting to remedy the violation. *Melville Confections, Inc. v. N.L.R.B., supra,* 327 F.2d at 692. See cases cited *supra,* p. . See also, *N.L.R.B. v. National Maritime Union,* 175 F.2d 686, 689 (C.A. 2, 1949), cert. denied, 338 U.S. 954 (1950), reh. denied, 339 U.S. 926 (1950); *N.L.R.B. v. F. H. McGraw & Co.,* 206 F.2d 635,

641 (C.A. 6, 1953); *International Union, United Mine Workers v. N.L.R.B.*, 184 F.2d 392, 393 (C.A.D.C., 1950).[9] The fact that the evidence was insufficient to establish any instance of discrimination against any particular applicant in no way undermines the Board's order, which is directed at a provision found to be unlawful on its face.

Finally, given the inherent discrimination and interference with employees' rights resulting from the instant pension arrangement, the Board is entitled to find an unfair labor practice even if evidence was introduced of a business justification for the discriminatory arrangement. *N.L.R.B. v. Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1968); *N.L.R.B. v. Great Dane Trailers*, 388 U.S. 26, 33-34 (1967); *N.L.R.B. v. Brown*, 380 U.S. 278, 287 (1965); *American Ship Building Co. v. N.L.R.B.*, 380 U.S. 300, 311-312 (1965); *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 231 (1963). It has long been recognized that neither a union nor an employer may assert a business justification for disparate treatment based on union membership because of the union's paramount obligation to represent the interests of all the employees. *Local 357, Teamsters v. N.L.R.B.*, 365 U.S. 667, 681 (1961) (Harlan J., concurring). *Radio Officers v. N.L.R.B.*, 347 U.S. 17, 46-48 (1954) affirming, *N.L.R.B. v. Gaynor*, 197

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[9] The Union and the Fund contend (Br. 9) that *N.L.R.B. v. Revere Metal Art Co.*, 280 F.2d 96 (C.A. 2, 1960) and *Local 138, International Union of Operating Engineers v. N.L.R.B.*, 321 F.2d 130 (C.A. 2, 1963) support the proposition that where there is no direct evidence of unlawful discrimination the Board cannot "presume illegality." However, neither case involves a clause affecting employment rights which was invalid on its face, and therefore the two cases are distinguishable. Thus, in *Revere*, the Court found no basis for inferring that the union would use a union-security clause that was otherwise valid on its face to deny employment rights to employees because of their failure to comply with internal union rules which set standards for membership beyond the payment of periodic dues and fees. Similarly, in *Local 138, supra*, 321 F.2d at 133-134, this Court found that the contested provisions in the collective agreement referring to union members could readily be interpreted as encompassing all employees. Here, in contrast, as shown *supra*, pp. 10-11, Section 2(a) on its face specifically permits the granting of preferential treatment to union members only.

F.2d 719 (C.A. 2, 1952). See also, *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) and cases cited therein. According to the Union and the Fund (Br. 7), . Section 2(a) is an attempt to deal with the problem employees have in proving covered employment prior to 1937 because of the absence of adequate records. However, as shown *supra*, Section 2(a) concerns itself only with this problem as applied to union members and makes no provision for the difficulties non-union employees encounter in proving pre-1937 employment. Hence, the Board properly found that the advantage given union members by Section 2(a) speaks for itself and is not insulated from illegality as a discriminatory arrangement by the asserted business justification.

CONCLUSION

For the reasons stated above, we respectfully submit that the Union's petition for review should be denied and the Board's order should be enforced in full.

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July, 1974.

UNITED STATES COURT OF APPEALS

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and	)	
PENSION FUND OF NEW YORK CITY TRUCKING INDUSTRY LOCAL 807, Intervenor,	)	
v.	)	
NATIONAL LABOR RELATIONS BOARD, Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's offset printed brief in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

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NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 25th day of July, 1974